

Michigan Department of Environmental Quality

In the Matter of:

Brighton Area Schools
A Michigan General Powers School District
Residential Wells Holly Road
Livingston County, Michigan

MDEQ Reference No.: AOC-RRD-08-003

Proceeding under Sections 20117 and 20137 of Part 201, Environmental Remediation,
of the Natural Resources and Environmental Protection Act, 1994 PA 451, as
amended.

**ADMINISTRATIVE ORDER BY CONSENT
FOR ACCESS**

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I. JURISDICTION

This Administrative Order by Consent (Order) is entered into voluntarily by and between the Michigan Department of Environmental Quality (MDEQ), and Brighton Area Schools, a Michigan General Powers School District (Brighton Area Schools), the party granting access, pursuant to the authority vested in the MDEQ by Sections 20117 and 20137 of Part 201, Environmental Remediation, of the Natural Resources and Environmental Protection Act, 1994 PA 451, as amended, (NREPA), MCL 324.20101 *et seq.*, MSA 13A.20101 *et seq.*; and Section 5 of Part 31, Water Resources Protection, of the NREPA, MCL 324.3105 *et seq.* This Order concerns the granting of access by Brighton Area Schools to certain real property at Brighton High School, 7878 Brighton Road, Brighton, Livingston County, Michigan, 48116.

II. DENIAL OF LIABILITY

The execution of this Order by Brighton Area Schools is neither an admission or denial of liability with respect to any issue dealt with in this Order nor an admission or denial of any factual allegations or legal determinations stated or implied herein.

III. PARTIES BOUND

3.1 This Order shall apply to and be binding upon Brighton Area Schools and the MDEQ and their successor entities. No change in ownership or corporate or legal status of Brighton Area Schools including, but not limited to, any transfer of assets or of real or personal property, shall in any way alter the responsibilities of the Brighton Area Schools under this Order. Brighton Area Schools shall provide the MDEQ with written notice prior to the transfer of ownership of part or all of the Brighton High School Property, and shall preserve the access provided for in this Order as required by Section X (Transfer of Property). Brighton Area Schools shall comply with the requirements of Section 20116 of the NREPA.

3.2 The signatories to this Order certify that they are authorized to execute this Order and legally bind the parties they represent.

3.3 Brighton Area Schools certifies that authority to grant this access has been provided by the Board of Education at a regular meeting of such Board.

IV. STATEMENT OF PURPOSE

4.1 In entering into this Order, it is the mutual intent of the Parties to provide the MDEQ with access to the Property to: implement interim response activities to prevent, mitigate, abate, or otherwise respond to or remedy the release or threatened release of hazardous substances, pollutants, or contaminants migrating onto the Property. These activities include the installation of a groundwater purge and treatment system and routine collection of groundwater samples. The activities to be conducted at the Property are set forth in the attached document, "State of Michigan Department of Management and Budget Facilities Administration Project Manual Groundwater Extraction System Installation for the Residential Wells Holly Road Facility," File Number 761/07124-RRD May, 2007 (Attachment 1).

4.2 In the event of a change of circumstance imposed by any of the following: the legislature, a reduction in appropriations, elimination of funding; Executive Order; or Order of the Director of the MDEQ or the Michigan Department of Management and Budget, the MDEQ may, at its discretion, reduce, temporarily suspend, or terminate the performance of the response activities described in this Order subject to the terms of Paragraph 7.5.

V. DEFINITIONS

5.1 "Brighton Area Schools" means Brighton Area Schools, a Michigan General Powers School District and its successor entities, and those authorized persons or entities acting on its behalf.

5.2 "MDEQ" means the Michigan Department of Environmental Quality, its successor entities, and those authorized persons or entities acting on its behalf.

5.3 "Parties" means Brighton Area Schools, a Michigan General Powers School District, and the MDEQ.

5.4 "Property" means the property located at 7878 Brighton Road, Brighton and described in the legal description provided in Attachment 2.

5.5 "RRD" means the Remediation and Redevelopment Division of the MDEQ and its successor entities.

5.6 The terms "State" and "State of Michigan" mean the Michigan Department of Environmental Quality, and any authorized representatives acting on its behalf.

5.7 Unless otherwise stated herein, all other terms used in this Order, which are defined in Part 3, Definitions, of the NREPA, MCL 324.301; Part 201 of the NREPA; or the Part 201 Administrative Rules, 1990 AACRS R 299.5101, *et seq.*, as amended by changes at 2002 Michigan Register 24 that became effective on December 21, 2002, shall have the same meaning in this document as in Parts 3 and 201 of the NREPA, and the Part 201 Administrative Rules. Where a conflict exists, the definition provided pursuant to Part 201 of the NREPA shall prevail.

VI. FINDINGS OF FACT AND DETERMINATIONS

6.1 The MDEQ has reason to believe that there is an off-site release or threatened release of hazardous substances migrating onto the Property owned and under the control of the Brighton Area Schools as described in Attachment 2 which utilizes the address of 7878 Brighton Road, Brighton, Michigan 48116. The MDEQ has been monitoring a chlorinated solvent groundwater contamination plume emanating from the property located at 525 North Fifth Street, Brighton, Michigan. The MDEQ

monitoring indicates that the chlorinated solvent trichloroethylene (TCE) is entering Leith Lake on the Property via the groundwater at concentrations that may pose a risk to aquatic life. The MDEQ analysis of the progress of the chlorinated solvent plume indicates that TCE in the groundwater at concentrations exceeding Part 201 groundwater volatilization to indoor air criteria and groundwater contact criteria is likely to approach the Brighton High School Building (Building) within a year and a half. These are MDEQ findings which have not been verified by Brighton Area Schools who accepts on information and belief the assertions of the MDEQ.

6.2 Access is required at the Property in order to undertake the response activities set forth below and in Attachment 1. The property description is attached as Attachment 2. Pursuant to Section 20126(4)(c), Brighton Area Schools is not liable for the releases migrating onto its property via the groundwater from the facility originating at 525 North Fifth Street, Brighton, Michigan.

6.3 On February 20, 2008, MDEQ, through its contractor, installed a groundwater treatment remediation system to capture the migrating chlorinated solvent contamination plume and treat the groundwater to meet effluent limits established in the National Pollution Discharge Elimination System (NPDES) operating permit. The treatment system has the capability of switching the outfall to a permitted sanitary sewer discharge if it becomes necessary to do so. The MDEQ designated contractor performs operation and maintenance on the groundwater treatment system. The treatment system includes three extraction wells with submersible pumps pumping at an average rate of ten gallons per minute each; a secured pre-fabricated small building housing filters, flow meters; bag filters; granulated carbon vessels; electric meter, and a heater. The groundwater treatment system is designed to capture contaminated groundwater on the north side of the Building via the extraction wells, transfer the contaminated water to the carbon vessels for treatment and convey the treated effluent to either the sanitary sewer or storm sewer system under the conditions of permits obtained by the MDEQ. The MDEQ, through its contractor, is responsible for permit compliance via routine sampling of the treated and untreated groundwater entering and

exiting the treatment system. Also, as set forth in Attachment 1, the MDEQ and its contractor, will continue to collect static water level data, field water chemistry, and analytical data from the Leith Lake and the existing monitoring well network including monitoring wells currently located on the Property in order to monitor the effectiveness of the groundwater treatment system once it is operational and the status of plume migration which will require future installation of monitoring wells around Leith Lake.

6.4 The MDEQ has performed baseline air monitoring at two semi-permanent vapor well cluster locations in the Building which overlie the centerline of the contaminated groundwater plume. The baseline monitoring data indicates that chlorinated solvents volatilizing into the indoor air space from the groundwater contamination plume do not pose an unacceptable risk to the health and welfare of the building occupants. Future indoor air and sub-slab monitoring frequencies will be determined by evaluation of plume groundwater data, operating efficiency of the groundwater remediation system and other factors which influence volatilization of contaminants from the groundwater. Indoor air and sub-slab monitoring frequencies will be determined by mutual agreement between the Parties as the project progresses over time.

6.5 Pursuant to Part 195, Environmental Protection Bond Implementation, and Part 201 of the NREPA, the Legislature of the state of Michigan has authorized expenditure of public funds for interim response activities including the connection of contaminated and threatened wells to the municipal water supply, remedial investigation activities to determine the nature and extent of the chlorinated solvent groundwater plume, installation of interim response soils and groundwater abatement equipment, operation and maintenance of soils and groundwater interim response equipment, decommissioning of the interim response soils and groundwater treatment equipment, and monitoring wells at the Residential Wells Holly Road facility.

6.6 The above-described activities are integral to prevent further migration of the chlorinated solvent groundwater contamination plume which is necessary to prevent an unacceptable hazard to the public health, safety and welfare, and the environment.

6.7 Section 3105 of the NREPA provides, in part:

The MDEQ may enter at all reasonable times in or upon any private or public property for the purpose of inspecting and investigating conditions relating to the pollution of any waters of this state.

6.8 Section 20117 of the NREPA provides, in part:

(1) If there is a reasonable basis to believe that there may be a release or threat of release, the directors or their authorized representatives (MDEQ) shall have the right to enter at all reasonable times any public or private property for any of the following purposes:

- (a) Identifying a facility;
- (b) Investigating the existence, origin, nature, or extent of a release or threatened release;
- (c) Inspecting, testing, taking photographs or videotapes, or sampling of any of the following: soils, air, surface water, groundwater, suspected hazardous substances, or any containers or labels of suspected hazardous substances;
- (d) Determining the need for or selecting any response activity; and
- (e) Taking or monitoring implementation of any response activity.

6.9 The estimated period for treatment of the chlorinated solvent plume is fifteen years. However, the exact length of time needed to operate the groundwater remediation system on the Property is uncertain.

BASED ON THE FOREGOING FACTS AND DETERMINATIONS, THE MDEQ AND BRIGHTON AREA SCHOOLS HEREBY AGREE, AND IT IS HEREBY ORDERED THAT:

VII. IMPLEMENTATION

7.1 Brighton Area Schools shall provide the MDEQ, its contractors, or other persons performing the MDEQ-approved response activities access to the Property as set forth in this Agreement for the purpose of performing the activities described in Paragraphs 6.2, 6.3, 6.4, and Attachment 1.

7.2 Within 180 days of the effective date of this Order, the MDEQ anticipates completion of the following activities: burial of the phone line, fencing, and landscaping and restoration of lawn within the work area detailed in Attachment 1. Subject to Paragraph 4.2, it is the intent of the MDEQ to perform the following activities:

- a. Installation of temporary and semi-permanent monitoring wells in the vicinity of Leith Lake as set forth in Attachment 1, which is anticipated to be completed within two years of the effective date of this Order; and
- b. Continue operation of the groundwater purge and treatment system; and
- c. Collection of water samples, water level measurements, and other monitoring well assessment activities, as set forth in Attachment 1, to continue for approximately twenty years after the effective date of this Order; and
- d. Restoration activities as provided in Paragraph 7.5. The MDEQ anticipates restoration activities will occur within 30 days of completion of removal of the treatment system and within 7 days of abandonment of monitoring wells and temporary borings.

7.3 Brighton Area Schools acknowledges that the MDEQ activities may interfere with Brighton Area School use of portions of its property. The MDEQ will coordinate its activities with Brighton Area Schools and will use reasonable efforts to minimize any such interference with education related activities. The MDEQ has also taken steps to improve the aesthetic appearance of the groundwater treatment building with concurrence with the Brighton Area Schools. For the purposes of this paragraph, "reasonable efforts" does not mean taking actions that will result in significant material

costs increases in the response activities being conducted by the MDEQ.

7.4 Brighton Area Schools shall not remove, damage, or interfere with monitoring wells or interfere with, interrupt, change, or otherwise disturb any equipment and supplies brought to the premises authorized by this Order. Brighton Area Schools shall not be liable for any harm or damage to MDEQ equipment or supplies, unless the same is caused directly by actions or negligence of Brighton Area Schools, its' employees or agents.

7.5 Upon completion of the response activities described in Paragraph 7.2, the MDEQ will remove all equipment installed for the response activities, and undertake reasonable efforts to restore to original condition any property, vegetation, and structures damaged by the MDEQ. If, as set forth in Paragraph 4.2, sufficient funds to complete the response activities described in Paragraph 7.2 become unavailable, the MDEQ and BAS shall negotiate a schedule for the MDEQ to remove all equipment installed for the response activities and to undertake reasonable efforts to restore to original condition any property, vegetation, and structures damaged by the MDEQ.

VIII. SAMPLING AND INVENTORY

8.1 All sampling and analysis conducted to implement this Order shall follow the methodologies prescribed by the Part 201 Rules and guidance provided by the MDEQ on sampling locations, parameters, detection limits, and analytical methods.

8.2 Any authorized MDEQ representatives will present their credentials upon entry of the Property.

8.3 The MDEQ, or its consultants or subcontractors, shall, as is practicable, provide Brighton Area Schools with notice prior to any sampling activity undertaken pursuant to this Order.

8.4 The MDEQ shall prepare a written inventory of samples, photographs, copies of reports taken and provide a copy of that inventory to Brighton Area Schools. The MDEQ shall provide a copy of sample analyses, photographs, and/or reports to the Brighton Area Schools designated contact person upon request.

IX. COMMUNICATIONS/NOTICES

9.1 Each party shall designate a Contact Person. The MDEQ Contact Person is Ms. Rebecca Taylor, MDEQ, RRD, Lansing District Office. Brighton Area Schools Contact Person is Mr. William Blanchard, Director of Operations, Brighton Area Schools. If any party changes its designated Contact Person, the name, address and telephone number of the successor shall be provided to the other party, in writing, as soon as practicable.

As to MDEQ:

Ms. Rebecca Taylor
Michigan Department of Environmental Quality
Remediation and Redevelopment Division
Lansing District Office
525 West Allegan
Lansing, Michigan 48933
Telephone: 517-335-6247
Fax: 517-241- 3571

As to Brighton Area Schools:

Mr. William Blanchard, Director of Operations
Brighton Area Schools
125 South Church Street
Brighton, Michigan 48116
Telephone: 810-299-4041
Fax: 810-299-4045

9.2 The MDEQ Contact Person shall have the primary responsibility for overseeing the implementation of the response activities and other requirements specified in this Order. The MDEQ may designate other authorized representatives, employees, contractors, and consultants to observe and monitor the progress of any activity undertaken pursuant to this Order.

X. TRANSFER OF PROPERTY

Any lease, deed, contract, or other agreement entered into by Brighton Area Schools, which transfers to another person a right of control over the Property or a portion of the Property, shall contain a provision expressly preserving the full rights of the MDEQ under this Order and obligating the transferee to comply with the Order.

XI. MODIFICATIONS

Modification of any provision of this Order shall be made by written agreement between Brighton Area School's Contact Person and the MDEQ, RRD Chief.

XII. ENFORCEMENT OF ORDER

12.1 Pursuant to Section 20137 of Part 201, this Order may be enforced by filing an action in a court of appropriate jurisdiction. The court of appropriate jurisdiction for enforcement of this Order shall be the Ingham County Circuit Court.

12.2 The Parties agree that service of any pleadings in an action to enforce this Order may be effectuated by mailing via United States Mail to the persons and addresses provided in Section IX (Communications/Notices).

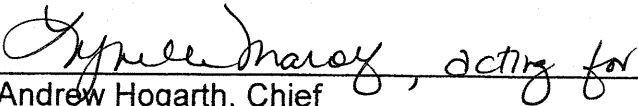
XIII. SEPARATE DOCUMENTS

This Order may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Order may be executed in duplicate original form.

XIV. EFFECTIVE DATE

This Order is effective upon the signature of the MDEQ Director's designee. All dates for the performance of obligations under this Order shall be calculated from the effective date. For the purposes of this Order, the term day shall mean a calendar day.

IT IS SO AGREED AND ORDERED BY:


Andrew Hogarth, Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality


9/05/08
Date

APPROVED AS TO FORM:

Kathleen L. Cavanaugh, P38006
Assistant Attorney General
Environmental, Natural Resources, and Agriculture Division

Date

IT IS SO AGREED BY:


Brighton Area Schools
A Michigan General Powers School District
By: James A Craig, II, Superintendent

August 12, 2008
Date

Pursuant to the authority granted by the Board of Education of Said School District on

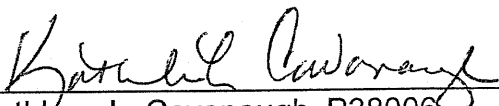
August 11, 2008.

IT IS SO AGREED AND ORDERED BY:

Andrew Hogarth, Chief
Remediation and Redevelopment Division
Michigan Department of Environmental Quality

Date

APPROVED AS TO FORM:



Kathleen L. Cavanaugh, P38006
Assistant Attorney General
Environmental, Natural Resources, and Agriculture Division

Date 7-2-08

IT IS SO AGREED BY:

Brighton Area Schools
A Michigan General Powers School District
By: James A. Craig, II, Superintendent

Date

Pursuant to the authority granted by the Board of Education of Said School District on
_____, 2008.

Attachment 1

"State of Michigan Department of Management and Budget Facilities Administration
Project Manual Groundwater Extraction System Installation for the Residential Wells
Holly Road Facility." File Number 761/07124-RRD May, 2007

Attachment 2

Property Description for Brighton High School, Parcel ID Number 4718-31-100-086

SEC 31 T2N R6E BEG AT NW COR S1/2 OF NW FRL 1/4, TH N 676.5 FT, E 21.78 FT, S 676.5 FT, E 455.22 FT, S3°E 800.7 FT, S86°W TO W LINE SEC, TH N TO POB, EXC BEG 240 FT E & 66 FT S OF NW COR OF S1/2 OF NW FRL 1/4, TH W 153 FT, S 132 FT, E 153 FT, N 132 FT TO POB, ALSO EXC BEG , S 1310.25 FT & E 402.23 FT FR NW COR, TH E ALG S LINE MORGAN PARK 80 FT, TH S 148 FT, TH W 80 FT, TH N 148 FT TO POB ALSO EXC BEG S 1310.25 FT & E 241.47 FT FR NW COR TH E 80.76 FT TH S 148 FT TH W 80.76 FT TH N 148 FT TO POB ALSO EXC BEG S 1310.25 FT & E 322.23 FT FR NW COR OF SEC TH E 80 FT TH S 148 FT TH W 80 FT TH N 148 FT TO POB. ALSO A PARCEL OF LAND DESCRIBED AS BEG NW COR OF SEC 31 TH S 623.80 FT FOR POB TH W 599.36 FT TH N 658.6 FT TH W 132 FT TH S 659.4 FT TH W 1256.99 TH S 663.17 FT TH E 662.36 FT TH S 832.50 FT TH ELY 1423.85 FT TH N TO POB. LEGAL DESC CORR 08/22/02. CONT. 66 AC M/L - SPLIT FROM 100-032, 11-87, SPLIT FR 100-068 5/95